

Message Text

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PAGE 01 BERLIN 02287 01 OF 02 010753Z
ACTION L-03

INFO OCT-01 EUR-12 ISO-00 FCSC-01 PM-05 NSC-05 SP-02
SS-15 CIAE-00 INR-10 NSAE-00 DODE-00 TRSE-00
OMB-01 H-01 SCS-06 CA-01 PPT-01 /064 W
-----073433 010812Z /11
R 010712Z APR 78
FM AMEMBASSY BERLIN
TO SECSTATE WASHDC 7055

LIMITED OFFICIAL USE SECTION 01 OF 02 BERLIN 02287

FOR L, EUR/CE AND FCSC

E.O. 11652: N/A
TAGS: CPRS, PEPR, US, GE
SUBJECT: US-GDR CLAIMS TALKS.
REF: A) STATE 62347, B) STATE 059645 AND PREVIOUS.

SUMMARY: DEPARTMENT ASSISTANT LEGAL ADVISOR AND FCSC
GENERAL COUNSEL, ACCOMPANIED BY TWO EMBOFFS, HELD INFOR-
MAL CLAIMS TALKS WITH GDR REPS MARCH 28 AND 29. US TEAM
PRESENTED DETAILED EXPLANATION OF FCSC PROCEDURES AND
PRESENTED OPTIONS TO GDR SIDE ON HOW LATTER MIGHT
COOPERATE IN PROVIDING DOCUMENTATION AND INFORMATION TO
ENABLE FCSC TO ARRIVE AT EQUITABLE DECISIONS ON INDIVID-
UAL CLAIMS. GDR TEAM, WHICH WAS NON-COMMITTAL ON US
PRESENTATION/OPTIONS, AGREED TO STUDY THEM AND TO RESPOND
AT A LATER, UNSPECIFIED DATE. TALKS WERE CONDUCTED IN A
FRIENDLY AND PLEASANT ATMOSPHERE, AND GDR QUESTIONS SEEMED
TO REFLECT A SERIOUS INTEREST IN US PROCEDURES AND TO HOLD
OPEN THE POSSIBILITY THAT THE GDR MIGHT SERIOUSLY CON-
SIDER COOPERATION ON PROVIDING DOCUMENTATION. IT IS TOO
EARLY, HOWEVER, TO PREDICT THEIR FORMAL REPLY TO US
PRESENTATION. END SUMMARY.

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PAGE 02 BERLIN 02287 01 OF 02 010753Z

1. DEPARTMENT ASSISTANT LEGAL ADVISOR FOR INTERNATIONAL
CLAIMS FABIAN KWIATEK AND FCSC GENERAL COUNSEL WAYLAND
MCCLELLAN, ACCOMPANIED BY TWO EMBOFFS, PARTICIPATED IN
INFORMAL CLAIMS TALKS WITH FOUR-PERSON GDR TEAM MARCH 28
AND 29 IN EAST BERLIN. GDR REPS WERE WALTER WERLING,
DEPUTY CHIEF, AMT FUER DEN RECHTSSCHUTZ DES VERMOEGENS
DER DDR (OFFICE FOR THE LEGAL PROTECTION OF PROPERTIES

OF THE GDR), FRIEDRICH FENN AND THOMAS FREYTAG OF THE AMT, AND URSULA HERZOG, DEPUTY CHIEF, LAW AND TREATY DIVISION, MFA.

2. IN MARCH 28 SESSION, US TEAM HIGHLIGHTED IMPORTANCE OF CLAIMS SETTLEMENT WITH PARTICULAR EMPHASIS ON CONGRESSIONAL CONCERN THAT US CITIZENS WHO LOST PROPERTY THROUGH ACTIONS OF THE GDR GOVERNMENT BE ADEQUATELY COMPENSATED. US TEAM MADE POINT THAT EQUITABLE SETTLEMENT OF CLAIMS WOULD GREATLY CONTRIBUTE TO BETTER BILATERAL RELATIONS.

3. US REPS GAVE DETAILED EXPLANATION OF FCSC FUNCTIONS AND THE US LEGISLATIVE REQUIREMENTS GOVERNING ITS OPERATION AND HOW THESE PROCEDURES DIFFERED FROM THE GDR'S NEGOTIATIONS WITH OTHER COUNTRIES. THEY NOTED THE FCSC SYSTEM HAD BEEN USED BY US IN NEGOTIATING CLAIMS SETTLEMENT AGREEMENTS WITH YUGOSLAVIA, BULGARIA, ROMANIA, HUNGARY, AND CZECHOSLOVAKIA, AND PROVIDED THE GDR SIDE WITH COPIES OF LAWS AND AGREEMENTS COVERING THOSE SETTLEMENTS AS WELL AS DOCUMENTS COVERING FCSC PROCEDURES AND ENABLING LEGISLATION FOR CLAIMS AGAINST THE GDR.

4. US REPS GAVE ROUGH ESTIMATE OF 6000 CLAIMS WITH A VALUE OF \$750 MILLION, AND EMPHASIZED REQUIREMENT IMPOSED BY CONGRESS ON FCSC THAT COMMISSION'S ADJUDICATION OF LIMITED OFFICIAL USE

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PAGE 03 BERLIN 02287 01 OF 02 010753Z

CLAIMS BE COMPLETED BY MAY 13, 1981. NEED FOR GDR COOPERATION IN PROVIDING DOCUMENTATION ON CLAIMS WAS STRESSED BY US REPS, WHO MADE POINT SEVERAL TIMES THAT IN ABSENCE OF GDR "HELP", FCSC MAY BE RENDERING DECISIONS BASED ON LESS THAN COMPLETE INFORMATION AND DOCUMENTATION. US REPS ASKED THAT GDR SIDE CAREFULLY STUDY THE US PROCEDURES AND PROPOSALS FOR IMPLEMENTING THEM, AND THAT A MEETING TAKE PLACE AT A LATER DATE TO RECEIVE GDR VIEWS ON THEIR WILLINGNESS TO COOPERATE WITH US FORMAT ON FORMAL CLAIMS NEGOTIATIONS AND SETTLEMENT. THE GDR SIDE AGREED TO STUDY THE PROPOSALS AND RESPOND AT A LATER MEETING.

5. AT MARCH 29 SESSION, US SIDE RESPONDED TO GDR QUESTIONS RELATING TO EVIDENCE, NATIONALITY AND INHERITANCE. US REPS DESCRIBED KINDS OF EVIDENCE OR DOCUMENTATION THAT WOULD BE DESIRABLE, AND PRESENTED THREE OPTIONS ON METHOD OF OBTAINING EVIDENCE: A) THE US GOVERNMENT WOULD PROVIDE INFORMATION ON INDIVIDUAL CLAIMS TO GDR AUTHORITIES WITH A REQUEST TO INVESTIGATE AND FURNISH DOCUMENTS; B) A US GOVERNMENT TEAM COULD COME TO THE GDR WITH THE RESPONSIBILITY OF OBTAINING DOCUMENTS DIRECTLY FROM CUSTODIANS OF RESPECTIVE RECORDS; OR C) INDIVIDUAL CLAIMANTS ON

THEIR OWN INITIATIVE COULD OBTAIN DOCUMENTATION THROUGH
LEGAL ADVISORY SERVICES IN THE GDR. FEES WOULD BE PAID BY
CLAIMANT IN US DOLLARS AND THE EVIDENCE OBTAINED WOULD BE
THE RESPONSIBILITY OF THE CLAIMANT AND THE LEGAL SERVICE.
US TEAM POINTED OUT THAT OPTIONS WERE NOT EXCLUSIVE AND
THAT ANY ONE OF THEM, OR COMBINATION OF THEM, OR INDEED
ANY OTHERS THAT GDR MIGHT PROPOSE TO ACCOMPLISH SAME END
WOULD BE CONSIDERED. THE GDR SIDE SAID THE PROPOSAL WAS
CLEAR, THAT THEY MUST STUDY IT, AND MAKE RECOMMENDATIONS TO
THEIR GOVERNMENT.

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PAGE 01 BERLIN 02287 02 OF 02 010743Z
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OMB-01 CA-01 SCS-06 PPT-01 /064 W
-----073335 010811Z /11

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LIMITED OFFICIAL USE SECTION 02 OF 02 BERLIN 02287

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6. US VIEWS ON DUAL NATIONALITY, STATELESSNESS AND
NATIONALITY OF JURIDICAL PERSONS IN RESPECT TO CLAIMS
MATTERS WERE PROVIDED IN RESPONSE TO GDR QUESTIONS. GDR
TEAM "AGREED" WITH US POSITION THAT ONLY CLAIMS OF PERSONS
WHO WERE CONTINUALLY US CITIZENS FROM DATE CLAIM AROSE TO
DATE OF FILING WOULD BE VALID. IT WAS STRESSED THAT BECAUSE
OF THIS POSITION, WHICH WAS CONSISTENT WITH THE RULE OF
INTERNATIONAL LAW, IT WAS NECESSARY TO HAVE EVIDENCE DETER-
MINING WHEN THE US CITIZEN WAS "DEPRIVED OF HIS PROPERTY
RIGHTS". THE GDR APPRECIATED THAT THE "DATE CAN VARY FROM
CASE TO CASE".

7. THE GDR SIDE'S QUESTIONS CONCERNING INHERITANCE BEGAN
WITH THE DOCUMENTS AND RECORDS THE COMMISSION WOULD RE-
QUIRE IN CASE OF HEIRS WHO HAD BEEN INVOLVED IN PROBATE
PROCEEDINGS IN THE GDR. FURTHER QUESTIONS CONCERNED INTE-
STATE SUCCESSION AND APPLICABILITY OF US LAW. US TEAM

PROVIDED FULL ANSWERS, USING SEVERAL ILLUSTRATIVE EXAMPLES.
GDR SIDE SAID THEY WILL AGAIN WANT TO DISCUSS INHERITANCE
QUESTIONS WHEN NEXT MEETING TAKES PLACE.

8. THE GDR ASKED THAT THE SUBSTANCE OF THE TALKS BE
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PAGE 02 BERLIN 02287 02 OF 02 010743Z

TREATED AS CONFIDENTIAL AND THAT NO INFORMATION BE
GIVEN TO THE PRESS OTHER THAN, IF ASKED, TO ACKNOWLEDGE
THAT INFORMAL TALKS HAD TAKEN PLACE, AND US SIDE AGREED.

9. A MEETING WAS HELD AT EMBASSY MORNING OF MARCH 30 TO
BRIEF REPRESENTATIVES OF EMBASSIES OF FRANCE, UK, NETHER-
LANDS, SWEDEN, NORWAY, SWITZERLAND, AND ITALY ON THE
PRESENTATION MADE BY THE GDR BY US CLAIMS TEAM AND TO
EXCHANGE VIEWS AND EXPERIENCES. (AUSTRIANS INVITED BUT
UNABLE TO ATTEND BECAUSE OF CHANCELLOR KREISKY'S VISIT TO
GDR.)

10. COMMENT: THE TALKS WERE CONDUCTED IN A FRIENDLY,
PLEASANT AND POSITIVE ATMOSPHERE, WHICH EXTENDED TO SOCIAL
EVENTS HOSTED BY BOTH SIDES. (PROF. HERMANN KLEYER, CHAIR-
MAN OF THE AMT FUER DEN RECHTSSCHUTZ DES VERMOEGENS DER
DDR AND DR. HANS-MARTIN GEYER, DIRECTOR OF THE USA DIV. OF
THE MFA AND MR. JOACHIM ELM, MFA USA DESK OFFICER WERE
INCLUDED IN SOCIAL FUNCTIONS.) THE GDR SIDE APPEARED
CLEARLY TO UNDERSTAND THE LEGISLATIVE CONSTRAINTS UNDER
WHICH THE FCSC OPERATES, AND THAT THE COMMISSION WILL
ADJUDICATE CLAIMS AND MAKE AWARDS WHETHER OR NOT THE GDR
HAS AN "INPUT". WHILE THEY MADE ABSOLUTELY NO COMMITMENT,
OTHER THAN CAREFULLY TO STUDY THE PRESENTATION/OPTIONS
AND REPLY AT A FUTURE MEETING, THEY DID NOT REJECT ANY PRO-
POSALS OR EVEN INDICATE THAT THEY WERE UNACCEPTABLE. IT
WAS THEREFORE UNNECESSARY TO SUGGEST OR DEMAND THAT THE
US AND THE GDR SUBMIT INDIVIDUAL CLAIMS OR CLAIMS ISSUES
TO AN INTERNATIONAL ARBITRAL TRIBUNAL, OR THE SECOND
"FALL-BACK" POSITION OF COMMENCING NEGOTIATIONS ON
UNADJUDICATED CLAIMS. GDR QUESTIONS SEEMED TO REFLECT A
GENUINE INTEREST IN THE US PROCEDURES AND TO HOLD OPEN THE
POSSIBILITY THAT THE GDR MIGHT SERIOUSLY CONSIDER COOPERA-
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PAGE 03 BERLIN 02287 02 OF 02 010743Z

TION ON PROVIDING DOCUMENTATION. HOWEVER, IT IS TOO EARLY
TO PREDICT WHAT THEIR REPLY TO THE US PRESENTATION MAY BE.
END COMMENT.

11. THIS MESSAGE HAS BEEN CLEARED IN DRAFT BY MESSRS.

KWIATEK AND MCCLELLAN. TRANSCRIPT OF DETAILED NOTES OF
MEETINGS WILL BE POUCHED TO DEPARTMENT. BOLEN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 01 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BERLIN02287
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780141-1081
Format: TEL
From: BERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197804104/aaaadkcq.tel
Line Count: 226
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: bf6c35a6-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 STATE 62347, 78 STATE 59645
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 27 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2827255
Secure: OPEN
Status: NATIVE
Subject: US-GDR CLAIMS TALKS.
TAGS: CPRS, PEPR, ACLM, US, GC
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/bf6c35a6-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014